IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 67 OF 2002.

1. Mr. Malaquias Gabriel Menezes,
   r/o M.G.M. Bldg., Corlim, Goa.
2. Gracy Menezes, r/o M.G.M.
   Bldg., Corlim, Goa. ... Appellants.

Versus

1. Profiro Hilario Menezes,
   r/o H. No. 305, Batim, Goa.
2. Mrs. Audrey R. Menezes,
   r/o H. No. 305, Batim, Goa. ... Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the Appellants.

Dr. F. Colaco, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 5th December 2002.

ORAL JUDGMENT.

By consent, the appeal is taken up for final hearing.

2. This appeal has been filed by the appellants, being aggrieved by the Order of the Civil Judge, Senior Division, Panaji, dated 28th August 2002, in Inventory Proceedings No. 84/86.

In the list of assets, which was furnished, Item No. 3 was described as hilly area, known as Palem, admeasuring about 13,125 sq. mts., situated at Batim, Taluka Ilhas, Goa, within the Village Panchayat of Batim and surveyed under Survey No. "128, Sub-Division 1". The description of the boundaries was given. The said Item No. 3 was valued ultimately at

Rs. 30,200/-. The Inventory Proceedings was amicably settled amongst all the interested parties and the properties at Items 2, 3, 4 and 6 of the list of assets were allotted to the Cabeca de Casal, that is, the present appellant no. 1 and his wife. Subsequently it was realized by the appellants that the property at Item No. 3 was not properly described as the said property was surveyed under Survey No. 128, Sub-Divisions 1 and 2. The learned trial Court, by its Order, dated 27th May 1994, granted the application and correction was ordered to be carried out in the list of assets at Item No. 3 by describing the said property as one surveyed under No. 128, Sub-Divisions 1 and 2. The interested parties preferred review, which was dismissed by the Court. The aggrieved parties thereafter preferred an appeal before this Court and, by consent, it was ordered that the parties would pursue the matter before the learned trial Court in terms of the provisions of Article 1434 of Family Laws read alongwith the relevant provisions of the Portuguese Civil Procedure Code. The learned trial Court, accordingly, after hearing the parties, passed an Order ordering an inquiry whether Item No. 3 consists of Survey No. 128, Sub-Division 1 or Survey No. 128, Sub-Divisions 1 and 2. The parties examined themselves and their witnesses.

It is apparent that Item No. 3 was valued on the basis that the said property was surveyed under Survey No. 128, Sub-Division 1 and was admeasuring 13,125 sq. mts.. The area of Survey No. 128, Sub-Division 2 was 2,475 sq. mts.. The learned trial Court, therefore, rightly came to the conclusion that the valuation, which was done by the Valuer, was of the area admeasuring 13,125 sq. mts. and not of the entire Survey No. 128, Sub-Divisions 1 and 2. In that background, therefore, according to the learned trial Court, the mere mentioning of the boundaries of Survey No. 128, Sub-Division 1 cannot be construed as covering Sub-Division 2 also. The learned trial Court also observed that the appellant no. 1, who was the Cabeca de Casal, had not examined the Valuer to show that he had valued the entire Survey No. 128, Sub-Divisions 1 and 2. The learned trial Court also came to the conclusion that the evidence on record revealed that the Sub-Division 2 of Survey No. 128 was a plain land and was valued at Rs. 10,000/-. The learned trial Court, after giving reasons, therefore, came to the conclusion that Survey No. 128, Sub-Division 2 cannot be held to be included in Item No. 3 of the list of assets and, consequently, there should be partition in respect of Survey No. 128, Sub-Division 2 in terms of Article 1434. The appellants, thus, being aggrieved by the aforesaid Order, filed the present Appeal from Order.

3. I have heard Mr. Coelho Pereira, the learned senior counsel appearing for the appellants and Dr. Colaco, the learned counsel appearing for the respondents. It was stated by Mr. Coelho Pereira, the learned senior counsel appearing for the appellants, that since neither parties had examined the Valuer, it was a fit case wherein opportunity should be given to the parties to examine the Valuer. It was for the appellants to establish that Sub-Division 2 was included in the valuation, which was done by the Valuer. In the description of the property at Item No. 3, it has been clearly described as admeasuring 13,125 sq. mts.. Sub-Division 2 of Survey No. 128 admeasures 2,475 sq. mts.. Thus, it was for the appellants to have established that Sub-Division 2 was included in the valuation of the property at Item No. 3, which was valued by the Valuer. No reasons have been stated as to why the Valuer was not examined. Even otherwise, it is apparent that Sub-Division 2 could not have been valued at Rs. 30,200/-. Only Sub-Division 1 of Survey No. 128, which was stated to be admeasuring 13,125 sq. mts., was valued at Rs. 30,200/-. As rightly held by the learned trial Court, the value of Sub-Division 2 is Rs. 10,000/- or thereabout. It is a plain land admeasuring 2,475 sq. mts. Merely because in Item No. 3 the boundaries have been stated, it would not lead to an unerring inference

that Sub-Division 2 had also been valued alongwith Sub-Division 1. There is no evidence to that effect and in the absence of any evidence to that effect, the learned trial Court was perfectly right in directing additional partition of Sub-Division 2 as Sub-Division 2 of Survey No. 128 was not included in the valuation.

4. I have perused the Order of the learned trial Court and I do not see any perversity in its reasoning. In the face of the evidence that was available, the learned trial Court was perfectly justified in arriving at the aforesaid finding. There is no reason warranting any interference with the Order of the learned trial Court and the Appeal from Order, therefore, deserves to be dismissed.

5. The Appeal from Order is, accordingly, dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.